

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

WELBY THOMAS COX, JR.,)	
)	
Plaintiff,)	
)	
v.)	No. 1:20-cv-00633-JPH-MJD
)	
JAMES RUSSELL LESOUSKY, JR.)	
Assistant US Attorney (Retired),)	
GARY BURMAN US Marshall,)	
)	
Defendants.)	

ORDER

I. Granting *in forma pauperis* status

Mr. Cox' motion to proceed *in forma pauperis*, dkt. [2], is **GRANTED**. See 28 U.S.C. § 1915(a). While *in forma pauperis* status allows a plaintiff to proceed without prepaying the filing fee, the plaintiff remains liable for the full fees. *Ross v. Roman Catholic Archdiocese*, 748 F. App'x 64, 65 (7th Cir. Jan. 15, 2019) ("Under 28 U.S.C. § 1915(a), a district court may allow a litigant to proceed 'without *prepayment* of fees,' . . . but not without *ever* paying fees."). No payment is due at this time.

II. Screening

A. Screening standard

The Court has the inherent authority to screen Mr. Cox' complaint. *Rowe v. Shake*, 196 F.3d 778, 783 (7th Cir. 1999) ("[D]istrict courts have the power to screen complaints filed by all litigants, prisoners and non-prisoners alike, regardless of fee status."). The Court may dismiss claims within a

complaint that fail to state a claim upon which relief may be granted. *See id.*

In determining whether the complaint states a claim, the Court applies the same standard as when addressing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). *See Cesal v. Moats*, 851 F.3d 714, 720 (7th Cir. 2017).

To survive dismissal,

[the] complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). *Pro se* complaints are construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers. *Perez v. Fenoglio*, 792 F.3d 768, 776 (7th Cir. 2015).

B. The complaint

The complaint names James Russell Lesousky, Jr., retired Assistant United States Attorney, and Gary Burman, United States Marshal, as defendants. Dkt. 1. Mr. Cox alleges that on May 15, 2006, one of the defendants failed to read Mr. Cox his *Miranda* rights after he was arrested at the courthouse in Louisville, Kentucky. *Id.* Mr. Cox seeks damages for “50,744 hours served for a total amount at minimum wage of \$405,952.00.” *Id.*

C. Discussion

Any claim that Mr. Cox made an involuntary statement after not receiving his *Miranda* rights is barred by the applicable one-year statute of limitations. *See Delgado-Brunet v. Clark*, 93 F.3d 339, 342 (7th Cir. 1996)

(*Bivens* actions, like actions under 42 U.S.C. § 1983, are considered personal injury claims and are governed by the personal injury statute of limitations and tolling laws in the state where the alleged injury occurred.); *Bonner v. Perry*, 564 F.3d 424, 430 (6th Cir. 2009) (a one-year statute of limitations applies in Kentucky). Mr. Cox filed this complaint on February 25, 2020, fourteen years after any alleged violation occurred. The statute of limitations has run because any claim would have accrued either at the pre-trial hearing(s), *Sornberger v. City of Knoxville, Ill.*, 434 F.3d 1006, 1026–27 (7th Cir. 2006), or at the criminal trial, *Chavez v. Martinez*, 538 U.S. 760, 767 (2003).

Accordingly, Mr. Cox' complaint must be **dismissed with prejudice** for failure to state a claim upon which relief can be granted.

D. Conclusion

Mr. Cox shall have through **May 15, 2020** to show cause why this case should not be dismissed. If Mr. Cox does not do so, the Court will dismiss this case with prejudice without further notice.

SO ORDERED.

Date: 4/15/2020

Distribution:

WELBY THOMAS COX, JR.
415 NW 9th Street
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James Patrick Hanlon
United States District Judge
Southern District of Indiana